

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-009811

02/19/2016

HONORABLE KAREN A. MULLINS

CLERK OF THE COURT
M. Scott
Deputy

RACHEL A TURLEY, et al.

SEAN K MCELENNEY

v.

LEO R BEUS, et al.

DAVID B ROSENBAUM

MARTIN A ARONSON
DANIEL G DOWD
KEITH L HENDRICKS
ROBERT J MILLER
SARA KATHRYN REGAN
JAY A ZWEIG

MINUTE ENTRY

The Court has received and reviewed Wilford R. and Nicole Cardon's Application for a Preliminary Injunction to Prevent Dissipation of Assets ("Application"). Beus and Nelson have joined in this Application but have not set forth any additional factual or legal support. The Application appears to request an injunction against the Receiver to preclude him from making final distributions of assets, permanently restructuring obligations related to assets (that are undefined in the Application), or permanently encumbering assets in a way "as to negate" Wilford R. and Nicole Cardon's (hereinafter referred to collectively as "Wil Cardon") claims.

In order to obtain relief, Wil Cardon must demonstrate: (1) a strong likelihood of success on the merits; (2) the possibility of irreparable harm to the plaintiff not remediable by damages if relief is not granted; (3) a balance of hardships favoring the plaintiff; and (4) public policy favors an injunction. *Shoen v. Shoen*, 167 Ariz. 58, 804 P.2d 787 (App. 1990), citing *Justice v. Nation Collegiate Athletic Ass'n*, 577 F.Supp. 356 (D.Ariz. 1983).

In the Application, Wil Cardon claims that "Plaintiffs have made it clear that they perceive that they have seized management and control of these Assets" and "it is apparent that

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Plaintiffs believe they have the right to administer and disburse the Assets as they deem appropriate with no regard for the pending appeal or the claims asserted by Wil and Nicole in this Action.” *Application*, 2:3-4, 7-9. Notably, Wil Cardon does not allege any actions have been taken that have caused him any harm. Nonetheless, the Court has thoroughly reviewed Wil Cardon’s Application for any allegations of any wrongful conduct by Plaintiffs or the Receiver.

There are only three facts that are offered in support of the Application itself. First, Wil Cardon cites to prior motions that have already been resolved by the Court or have not yet been ruled upon due to lack of jurisdiction given the pending appeal. *Application*, 6:22-7:13 7:22-8:2. These motions are cited to demonstrate what Plaintiffs believe or perceive; they do not evidence any seizure or control of any assets. Second, Wil Cardon alleges that Plaintiffs sought to change the directors of Rio Claro. *Application*, 6:22-7:13 7:22-8:2; *Declaration of Wil R. Cardon*, ¶37 and Exhs. H and I thereto. A review of these supporting exhibits evidences only that a corporate meeting was set to remove and replace Plaintiff Patrick R. Cardon and Wilford R. Cardon as directors of Rio Claro, Inc. Nowhere in the Application does it state whether or not these directors were removed and replaced, nor does it identify any actions taken by any new directors. Third, Wil Cardon alleges that the Receiver has indicated that it intends to make distributions. *Application*, 7:16-17; *Declaration of Wilford R. Cardon*, ¶43 and Exh. K thereto. The exhibit supporting this distribution refers only to the Receiver’s approval of distribution checks to the receivership entities and partners “that could have been cut in 2015 but were not because of the pending litigation”. The Declaration of Wil Cardon alleges only that “[a]lthough I do no[t] oppose the Receiver distributing to third parties monies to which they are entitled, the proposed distributions go well beyond that.” *Declaration of Wilford R. Cardon*, ¶43. No further facts are offered as to what distributions were made or to whom. Thus, again, these facts do not evidence any actions by Plaintiffs or the Receiver that have in any way harmed Wil Cardon.

None of the foregoing facts, if taken as true, support the allegation that Plaintiffs have seized management and control of assets and intend to disburse assets without regard for the pending appeal or the claims asserted by Wil Cardon in this action. Indeed, there are no facts at all that demonstrate that Plaintiffs are administering any assets or making any distributions, let alone administering and distributing assets in a manner harmful to Wil Cardon. To the extent that the Application is grounded on Wil Cardon’s opinion that Plaintiffs “perceive” or “believe”, the Court declines to enter an injunction without supporting facts that wrongdoing is afoot.

On its face, the Court finds that there is not a likelihood of success on the merits, that no irreparable harm has been shown, or even alleged, that no balance of hardships favors Wil Cardon, and that no meritorious public policy has been identified. Because the Application must set forth sufficient grounds for injunctive relief, A.R.S. §12-1803(A), and the grounds set forth herein are deficient on their face,

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IT IS ORDERED denying Wilford R. and Nicole Cardon's Application for a Preliminary Injunction to Prevent Dissipation of Assets.